

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 16, 1991,
at 8:30 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 501

Motion: REP. GOULD MOVED HB 501 DO PASS.

Motion/Vote: REP. NELSON moved to amend HB 501 by changing 3 to 2
on line 20, making it 2 times greater the retail value. Motion
carried 14 to 6 with Rep's: Gould, Toole, Johnson, Boharski,
Stickney and Lee voting no.

Motion: REP. MEASURE moved to amend HB 501 by removing "or \$50"
and the term "the greater of", just for minors.

Discussion: REP. MEASURE stated the \$50 floor is ridiculous. Most of the people that are going to be prosecuted under this bill are young kids that could easily learn their lesson by a trip to the police station. The retailers are going to go after these kids for that \$50 every time. REP. MEASURE thought it should be removed for minors.

Vote: Motion carried 16 to 4 with Rep's: Keller, Clark, Johnson and Gould.

Motion/Vote: REP. MESSMORE MOVED HB 501 DO PASS AS AMENDED.

Motion carried 16 to 4 with Rep's: Russell, Wyatt, Measure and Whalen voting no.

EXECUTIVE ACTION ON HB 417

Motion: REP. MEASURE MOVED HB 417 DO PASS.

Discussion: REP. MEASURE stated this bill prevents paramilitary activities on behalf of conspiracies that are basically in the form of Aryan Nation type groups. REP. MEASURE received some amendments from the American Civil Liberties Union which should be looked at. They are designed to do three things. Two are intertwined to provide civil penalties against individuals that participate in these types of activities.

REP. WHALEN stated I cannot support this bill with out the exemption.

Motion/Vote: REP. WHALEN MADE A SUBSTITUTE MOTION to amend HB 417. Motion carried 18 to 2 with Rep's: Clark and Brown voting no.

Motion: REP. MEASURE moved to amend HB 417.

Discussion: REP. RUSSELL stated the amendments are good. These organizations get large and have lots of money. You have to get them where you will hurt them.

REP. CLARK asked REP. MEASURE if these things are all covered under current Montana Law? REP. MEASURE said it is a lot like a couple of other things we passed this year. Because of this particular area, it is partially a message. REP. MEASURE stated he believes there are no civil damages for this type of activity. This is a specialized group of activities.

REP. RICE stated section four seems to basically creating a state of civil rights cause of action somewhat similar to what already exists at the federal level.

REP. MEASURE said that REP. RICE was correct.

Motion: REP. MEASURE MADE A SUBSTITUTE MOTION to amend as proposed amendments, but on line 4 and 5 of new section 4, it would say "secured by this act" and strike "constitution and laws in the state of Montana".

Vote: Motion carried 12 to 8. EXHIBIT 1

Motion: REP. MEASURE MOVED HB 417 DO PASS AS AMENDED.

Discussion: REP. RICE stated he felt the committee has amended a lot into this bill and is nervous about continuing on until he has had an opportunity to go through it and study it a little bit.

Motion: REP. CLARK MOVED HB 417 BE TABLED. Motion carried 17 to 3 with Rep's: Toole, Brown and Strizich voting no.

EXECUTIVE ACTION ON HB 451

Motion: REP. BROOKE MOVED HB 451 DO PASS.

Motion: REP. BROOKE moved to amend HB 451. EXHIBIT 2

Discussion: John MacMaster directed the committee to look at page 7 of the bill. We are in a section of the bill that says that when criminality depends on the victim being less than 16, that the defense for the defendant prove that he reasonably believes the child to be above that age. On page 5, lines 5 and 6, they are taking out the "Date-Rape Provision" which says evidence of the victims past sexual with the offender is admissible. On lines 10-14 there is a procedure that the court goes through if the defendant is going to propose and evidence about the victims past conduct. What these amendments do is put back in what is struck on lines 5 and 6 of page 7. Therefore, that evidence would then be admissible. The rest of the amendments would strike what is on lines 10-14 which is the procedure the court goes through when you offer this kind of evidence.

REP. RUSSELL asked REP. BROOKE what reason there might be for these amendments? REP. BROOKE stated during the hearing, Holly Franz, who drafted the bill, had heard from Rep. Measure that he had some concerns about what was being deleted from the law about defense. Ms. Franz handed me a suggestion and I haven't had a lot of time to put into them, they're offered because of the concern I heard from other members. REP. BROOKE stated she was not sure she was in favor of them, but wanted to put them out for discussion.

REP. TOOLE stated this bill was going to eliminate Date-Rape Provisions and this amendment restores that.

REP. BROOKE WITHDREW HER MOTION TO AMEND HB 451.

REP. WHALEN asked REP. BROOKE whether she was trying to get to a situation where people were unwilling to come forward because to find out if they possibly had the HIV infection but couldn't admit to deviate sexual conduct and be prosecuted? REP. BROOKE said that was one of her objectives.

Motion: REP. WHALEN moved to amend HB 451 by striking all the amendments to the statutes or new sections that have been inserted with the exception of page 11, lines 15-17 modifying it to read "deviate sexual relations means any form of sexual conduct or intercourse with an animal".

Vote: Motion failed.

Motion: REP. BROOKE moved to amend HB 451 by saying bestiality means any form of sexual contact with animal and renumber subsections. Motion carried.

Motion: REP. BROOKE MOVED HB 451 DO PASS AS AMENDED.

Motion/Vote: REP. WHALEN MADE SUBSTITUTE MOTION THAT HB 451 BE TABLED. Motion failed.

Motion/Vote: REP. NELSON moved to amend HB 451 on page 3, line 10, after the word "another" insert the word "person". Motion carried.

Motion/Vote: REP. MEASURE moved to amend HB 451 on line 19, page 5, strike 20 and reinsert 10. Motion failed. EXHIBIT 3

Motion/Vote: REP. MEASURE moved to amend HB 451 on line 19, page 5, reduce 40 to 20. Motion carried 19 to 1 with Rep. Brooke voting no.

Motion/Vote: REP. MEASURE moved to amend HB 451 by reinstating lines 11 - 20 on page 6. Motion failed. EXHIBIT 4

Motion/Vote: REP. MEASURE moved to amend HB 451 by inserting "evidence of the victim's past sexual conduct with the offender or" on page 7, line 7. Motion carried 10 to 9. EXHIBIT 5

Motion/Vote: REP. BROOKE moved to amend HB 451 to coordinate it with SB 51. Motion carried unanimously.

Motion/Vote: REP. BROOKE MOVED HB 451 DO PASS AS AMENDED. Motion carried 13 to 7. EXHIBIT 6

EXECUTIVE ACTION ON HB 417

Motion: REP. MEASURE MOVED HB 417 BE RECONSIDERED. Motion carried.

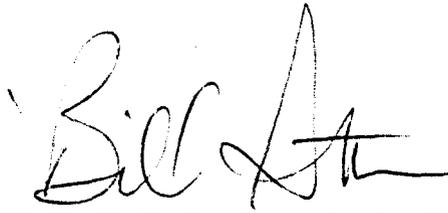
Motion: REP. GOULD MOVED HB 417 DO PASS.

Motion: REP. MEASURE to amend HB 417 by removing the amendments I proposed. Motion carried 17 to 3 with Rep's: Whalen, Wyatt and Brown voting no.

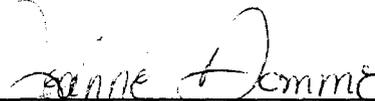
Motion: REP. MEASURE MOVED HB 417 DO PASS AS AMENDED. Motion carried 18 to 2 with Rep's: Wyatt and Whalen voting no.

ADJOURNMENT

Adjournment: 10:10 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-16-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

2-25
2-18-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 501 (first reading copy -- white) do pass as amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 4.
Strike: "INCREASING"
Insert: "CHANGING"
Strike: "MINIMUM"

2. Title, line 5.
Strike: "AMOUNT OF A"

3. Title, lines 5 and 6.
Strike: "TO THE" on line 5 through "\$50" on line 6

4. Page 1, line 19.
Strike: "the greater"

5. Page 1, line 20.
Strike: "of three"
Insert: "two"
Strike: "or \$50"

6. Page 2, line 5.
Strike: "three"
Insert: "two"

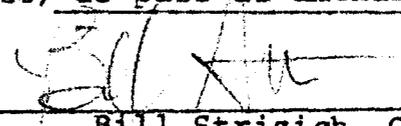
2:25
2-18-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 417 (first reading copy -- white) do pass as amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 4.

Following: line 11

Insert: "(4) Subsection (1) does not apply to an employer or employees involved in a labor dispute."

2:25
2-18-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 451 (first reading copy -- white) do pass as amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 7.

Strike: "REPEALING"

Insert: "AMENDING"

2. Title, line 9.

Strike: "45-1-205,"

3. Title, line 10.

Following: "45-5-504,"

Insert: "45-5-505,"

4. Title, lines 10 and 11.

Strike: "46-15-401" on line 10 through "46-23-502," on line 11

5. Title, line 12.

Strike: "REPEALING SECTION 45-5-505, MCA;"

6. Page 2, line 15.

Following: "spouse"

Insert: "person"

7. Page 3, line 10.

Following: "another"

Insert: "person"

8. Page 5, line 19.

Strike: "40"

Insert: "20"

9. Page 7, line 7.

Following: "~~(b)~~"

Insert: "evidence of the victim's past sexual conduct with the offender or"

2125
2-18-91
JDB

February 18, 1991
Page 2 of 2

10. Page 25, line 8, through page 27, line 2.

Strike: section 9 in its entirety

Renumber: subsequent sections

11. Page 29, line 8, through page 34, line 10.

Strike: sections 12 through 15 in their entirety

Renumber: subsequent sections.

12. Page 36, lines 13 and 14.

Strike: section 18 in its entirety

Insert:

"Section 13. Section 45-5-505, MCA, is amended to read:

"45-5-505. ~~Deviate sexual conduct~~ Bestiality. (1) A person who knowingly engages in ~~deviate sexual relations~~ bestiality or who causes another to engage in ~~deviate sexual relations~~ bestiality commits the offense of ~~deviate sexual conduct~~ bestiality.

(2) A person convicted of the offense of ~~deviate sexual conduct~~ bestiality shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

(3) ~~A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both~~ For purposes of this section, "bestiality" means any form of sexual contact or of sexual intercourse with an animal."

EXHIBIT 1
DATE 2-16-91
HB 417

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-16-91 BILL NO. HB 417 NUMBER _____

MOTION: Substitute Motion by Rep. Measure

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	12	8

Ex. 2
2-16-91
HB 451

Insert:

"Section 13. Section 45-5-505, MCA, is amended to read:

"45-5-505. ~~Deviate sexual conduct~~ Bestiality. (1) A person who knowingly engages in ~~deviate sexual relations~~ bestiality or who causes another to engage in ~~deviate sexual relations~~ bestiality commits the offense of ~~deviate sexual conduct~~ bestiality.

(2) A person convicted of the offense of ~~deviate sexual conduct~~ bestiality shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

(3) ~~A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both~~ For purposes of this section, "bestiality" means any form of sexual contact or of sexual intercourse with an animal."

EXHIBIT 3
DATE 2-16-91
HB 451

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-16-91 BILL NO. HB 451 NUMBER _____

MOTION: Rep. Measure amendment changing 20 back to 10.

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO		/
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	9	11

EXHIBIT 4
 DATE 2-16-91
 HB 451

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-16-91 BILL NO. HB 451 NUMBER _____

MOTION: Rep. measure amendment reinstating lines
11-20 on page 6.

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		—
REP. ARLENE BECKER		—
REP. WILLIAM BOHARSKI	—	—
REP. DAVE BROWN		—
REP. ROBERT CLARK	—	—
REP. PAULA DARKO		—
REP. BUDD GOULD		—
REP. ROYAL JOHNSON		—
REP. VERNON KELLER	—	
REP. THOMAS LEE	—	
REP. BRUCE MEASURE	—	
REP. CHARLOTTE MESSMORE	—	
REP. LINDA NELSON	—	
REP. JIM RICE	—	
REP. ANGELA RUSSELL		—
REP. JESSICA STICKNEY		—
REP. HOWARD TOOLE		—
REP. TIM WHALEN	—	
REP. DIANA WYATT		—
REP. BILL STRIZICH, CHAIRMAN		—
TOTAL	8	11

EXHIBIT 5
DATE 2-16-91
HB 451

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-16-91 BILL NO. HB#451 NUMBER _____

MOTION: Rep. Measure amend

PASSED

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN	/	
REP. ROBERT CLARK	/	/
REP. PAULA DARKO		/
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE		/
REP. TIM WHALEN	/	
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	9

EXHIBIT 6
 DATE 2-16-91
 HB 451

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-16-91 BILL NO. 451 NUMBER _____

MOTION: Rep. Brooke DPA

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	X	
REP. ARLENE BECKER	X	
REP. WILLIAM BOHARSKI		X
REP. DAVE BROWN	X	
REP. ROBERT CLARK	X	
REP. PAULA DARKO	X	
REP. BUDD GOULD		X
REP. ROYAL JOHNSON	X	
REP. VERNON KELLER		X
REP. THOMAS LEE		X
REP. BRUCE MEASURE	X	
REP. CHARLOTTE MESSMORE		X
REP. LINDA NELSON	X	
REP. JIM RICE		X
REP. ANGELA RUSSELL	X	
REP. JESSICA STICKNEY	X	
REP. HOWARD TOOLE	X	
REP. TIM WHALEN		X
REP. DIANA WYATT	X	
REP. BILL STRIZICH, CHAIRMAN	X	
TOTAL	13	7

Ex. 2

2-16-91

HB 451

Insert:

"Section 13. Section 45-5-505, MCA, is amended to read:

"45-5-505. ~~Deviate sexual conduct~~ Bestiality. (1) A person who knowingly engages in ~~deviate sexual relations~~ bestiality or who causes another to engage in ~~deviate sexual relations~~ bestiality commits the offense of ~~deviate sexual conduct~~ bestiality.

(2) A person convicted of the offense of ~~deviate sexual conduct~~ bestiality shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

(3) ~~A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both~~ For purposes of this section, "bestiality" means any form of sexual contact or of sexual intercourse with an animal."